

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

PEGGY L. CHEATHAM

Debtor(s).

In Proceedings  
Under Chapter 13

Case No. 01-41977

OPINION

Creditor, Integra Bank, N.A. ("Bank"), objects to confirmation of the debtor's Chapter 13 plan, which proposes to pay the Bank's residential mortgage claim over the course of the debtor's 60-month plan. The Bank asserts that because the mortgage matured prior to bankruptcy, the debtor was obligated to pay the entire mortgage indebtedness at the time of filing. Thus, the Bank maintains, the debtor's attempt to pay the Bank's claim over the life of the plan violates the anti-modification provision of 11 U.S.C. § 1322(b)(2).

It is undisputed that the debtor became liable for the entire mortgage amount of \$25,392.97 prior to her bankruptcy filing on September 6, 2001. The debtor's obligation to the Bank is based on a three-year "balloon" note and mortgage that matured on August 20, 2000. On June 15, 2001, the Bank filed a foreclosure action to enforce its rights under the mortgage. This action is currently pending in state court.

In her plan, the debtor proposes to make payments to the

Bank of \$526 per month, plus 9% interest, for 60 months. The Bank, while not challenging the adequacy of these payments to fully satisfy the debtor's obligation,<sup>1</sup> objects that the proposed plan would impermissibly modify its rights as a secured creditor under § 1322(b)(2).

Section 1322(b)(2) of the Bankruptcy Code provides that a plan may not "modify the rights of holders of secured claims . . . secured only by a security interest in real property that is the debtor's principal residence[.]" 11 U.S.C. § 1322(b)(2). This provision affords special protection for residential mortgage claims and would otherwise prevent a debtor from extending payments beyond the original mortgage term. An exception to this provision exists, however, in § 1322(c)(2). Section 1322(c)(2) states:

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law--

. . . .

(2) in a case in which the last payment on the original payment schedule for a [residential mortgage claim] is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

11 U.S.C. § 1322(c)(2) (emphasis added).

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<sup>1</sup> The Bank has not filed a proof of claim showing the total amount of its secured claim. This would include interest accrued following the foreclosure action, court costs, and other expenses allowable under the mortgage.

Section 1322(c)(2), enacted as part of the Bankruptcy Reform Act of 1994, defines a narrow class of claims to which the "principal residence" provision of § 1322(b)(2) does not apply. These claims, secured by short-term mortgages and mortgages with balloon payments, are exempt from the anti-modification provision of § 1322(b)(2) and can be modified under § 1325(a)(5) to the same extent as other secured claims. Congress apparently believed that debtors with such mortgages need additional protection, since short-term and balloon payment mortgages generally have high rates or terms that are particularly unfavorable.<sup>2</sup> See 8 Collier on Bankruptcy, ¶ 1322.16, at 1322-52 (15th ed. rev. 2001).

The language of § 1322(c)(2), while clearly applying to mortgages on which the last payment comes due during the life of a plan, is also broad enough to include mortgages on which the final payment has come due prior to the debtor's bankruptcy filing. See In re Lobue, 189 B.R. 216, 218 (Bankr. S.D. Fla. 1995); In re Escue, 184 B.R. 287, 292 (Bankr. M.D. Tenn. 1995); see also In re Sarkese, 189 B.R. 531, 534-35 (Bankr. M.D. Fla. 1995); In re Chang, 185 B.R. 50, 53 (Bankr. N.D. Ill. 1995). In

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<sup>2</sup> Section 1322(c)(2) also applies to long term mortgages on which debtors have nearly completed payments. Such debtors often have large amounts of equity that could be lost in a foreclosure action. See 8 Collier on Bankruptcy, ¶ 1322.16, at 1322-52.

such a case, the debtor may pay the mortgage balance over the life of the Chapter 13 plan, a period extending for as long as five years. Chang. This extension enables debtors to retain their homes for a few additional years and may enable them to sell the homes at a more favorable economic time, obtain replacement financing, or, if their economic circumstances improve, pay off the mortgage debt. Chang. The Court finds that § 1322(c)(2), by its terms, applies in this case to allow the debtor to pay her mortgage which ballooned pre-petition over the life of her Chapter 13 plan. Section 1322(c)(2) provides an exception to the anti-modification provision of § 1322(b)(2) in this instance. Accordingly, the Court will overrule the Bank's objection to confirmation of the debtor's plan. The Court notes, however, that in order to utilize the special provision of § 1322(c)(2), the debtor's plan must satisfy the confirmation requirements of § 1325(a)(5). See Sarkese, 189 B.R. at 535-36. Section 1325(a)(5) provides for the confirmation of a plan if, with respect to each "allowed secured claim" provided for by the plan,

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim;

(C) the debtor surrenders the property securing such claim to such holder.

11 U.S.C. § 1325(a)(5)(B). In this case, the Bank has filed no proof of claim.<sup>3</sup> Because § 1325(a)(5) relates specifically to an "allowed secured claim," the Court is unable to determine, in the absence of a claim being filed and allowed on behalf of the Bank, whether there has been compliance with the confirmation requirements of § 1325(a)(5). Accordingly, the Court declines to find that the debtor's plan, as proposed, qualifies for confirmation under § 1325(a)(5).

SEE WRITTEN ORDER.

ENTERED: January 18, 2002

/s/ KENNETH J. MEYERS  
UNITED STATES BANKRUPTCY JUDGE

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<sup>3</sup> A debtor who is liable to a creditor may file a proof of such creditor's claim if the creditor does not timely file a proof of claim. See 11 U.S.C. § 501(c). A proof of claim filed under § 501 is deemed allowed unless a party in interest objects. See 11 U.S.C. § 502.